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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/694,198	10/27/2003	Dennis L. Keiser	KEISER.020A	3867

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EXAMINER

FOREMAN, JONATHAN M

ART UNIT	PAPER NUMBER
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3736

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
3 MONTHS	03/26/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 03/26/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/694,198

Applicant(s)

KEISER, DENNIS L

Examiner

Jonathan ML Foreman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7/5/06 and 11/30/06.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 10-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

New grounds of rejection are contained within this Office Action. Accordingly this action has been made Non-Final.

Election/Restrictions

1. Claims 10 – 12 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 11/30/06.

Drawings

2. The drawings corrections received on 7/5/06 are accepted.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 8 and 9 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent No. 6,672,157 to MacFarlane et al.

In regard to claim 1, MacFarlane et al discloses a method of evaluating the power of a muscle group of a including initializing a resistance element to a first resistance level; moving an engagement assembly coupled to the resistance element at a highest achievable velocity through an exercise stroke; measuring a representative velocity at which the engagement assembly is moved through the exercise stroke and collecting data responsive to the representative velocity; increasing

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the resistance level of the resistance element; repeating the acts of moving, measuring and increasing until sufficient data are collected; calculating power for each exercise stroke based on the resistance level for each exercise stroke and the representative velocity for each exercise stroke; and determining a maximum power for the muscle group (Col. 10, line 50 – Col. 11, line 67).

Regarding claims 8 and 9, MacFarlane et al teaches to stop the exercise stroke once a leg was tested three times, so this could be viewed as a predetermined number of exercise strokes. Also MacFarlane et al teaches to stop at a specific resistance level, so this could be viewed as a predetermined resistance level. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide MacFarlane et al with a method step that included ceasing data collection once either a resistance level was obtained or a predetermined number of exercise strokes were completed, because the user of the system knows his/her own boundaries and how many reps or what resistance level they are comfortable with. Also due to the varying methods of determining sufficient data it is not viewed as a critical part of the current invention or method step.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2, 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6,672,157 to MacFarlane et al.

Regarding claim 2, it would have been obvious to one having ordinary skill in the art to determine a velocity and a resistance level where the maximum power is so that if the user performs another power test there is a known velocity and resistance level where the last maximum power was obtained for comparison and analysis, which could provide information for someone who was rehabilitating a specific group of muscles.

Regarding claim 5, MacFarlane et al. discloses giving the subjects a good 20 – 30 second rest between trials, but fails to disclose the time between the act of measuring increasing as the resistance level increases. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of MacFarlane et al, with a step of allowing the user to rest for an increasing amount of time as the strain of the exercise increases before attempting a new resistance level, to allow for accurate and valid power testing results to be obtained.

Regarding claim 7, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a method step to MacFarlane et al that included determination of sufficient data based on an exercise stroke not being completed because this prevents a valid power calculation to be determined because the distance completed by a full stroke is not the same for the uncompleted stroke.

6. Claims 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over MacFarlane et al in view of Stima III (4846466). MacFarlane et al discloses the claimed method except for the resistance element being a pneumatic cylinder. Stima, III teaches a resistance element that is a pneumatic cylinder (see Column 4, lines 22-42), which allows for the resistance of the weight-lifting machine to be increased or decreased fairly easily. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of MacFarlane et al to include a

pneumatic cylinder system as the resistance element, as taught by Stima, III, to allow for the resistance of the weight-lifting machine to be increased or decreased with relative ease.

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over MacFarlene et al in view of Carlson (4730829). MacFarlene as modified discloses the claimed invention except for the engagement assembly being configured as a chest press, including a resistance element including a respective position transducer. Carlson teaches it is known to provide a measuring system for each side of the body and break/resistance mechanism for each side of the body on a chest press system (see Column 3, lines 24-38, see columns 21-22, lines 45-10, also see Figure 1), because one side of the body maybe stronger than the other side so the maximum power for each side of the body may differ thus requiring the system to measure each side independently. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of MacFarlene et al with an engagement assembly being configured as a chest press, including a resistance element including a respective position transducer, as taught by Carlson, because one side of the body maybe stronger than the other side so the maximum power for each side of the body may differ thus requiring the system to measure each side independently.

8. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over MacFarlene et al in view of Stima, III as applied to claim 3 above, and further in view of Brock (6231481). MacFarlene et al as modified discloses the claimed invention except for the velocity is determined periodically measuring a position of a piston in a pneumatic cylinder. If the pneumatic cylinder is the means for providing resistance, it can also be read as the weight portion as discussed in Brock. Brock teaches to provide a position transducer on the weight or resistance means to determine the distance traveled and then to calculate the power using the weight or resistance value and the velocity determined from the distance values (see Columns 3-7, lines 15-44). It would have been obvious to

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one having ordinary skill in the art at the time the invention was made to modify the device and method of MacFarlane et al to include a position sensing means in the piston of a pneumatic cylinder, as taught by Brock, to determine the distance traveled of the resistance providing means and to then calculate the power using the weight or resistance value and the velocity determined from the distance values determined from the position transducer.

Response to Arguments

9. Applicant's arguments filed 7/5/06 have been fully considered but they are not persuasive. Applicant asserts that MacFarlane et al. fails to disclose "increasing the resistance level of the resistance element", "repeating the acts of moving, measuring and increasing until sufficient data are collected", and "determining a maximum power for the muscle group". However, the Examiner disagrees. MacFarlane et al. discloses increasing the resistance level of the resistance element (Col. 11, lines 55 – 57); repeating the acts of moving, measuring and increasing until sufficient data are collected (Col. 11, lines 55 – 61); and determining a maximum power for the muscle group (Col. 10, lines 50 – 57).

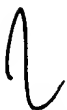
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan ML Foreman whose telephone number is (571)272-4724. The examiner can normally be reached on Monday - Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



JMLF

